IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.66 OF 2003

Mr. Sashi G.K. Panajikar,
married, businessman,
major of age, residing
at Veling, Mardol-Goa ... PETITIONER

VERSUS

1. Mrs. Sarita S.K. Panajikar,
housewife, major of age,
residing at Veling, Mardol;

2. Mr. Shaik Irfan,
son of Shaik Haroon,
bachelor, driver,
aged about 27 years,
residing at Veling ... RESPONDENTS.

Shri V.A. Lawande, Advocate for the Petitioner.

Ms A. Razak, Advocate under Legal Aid Scheme, for the Respondent No.1.

CORAM : F.I. REBELLO,J.

DATED : JUNE 5, 2003.

ORAL JUDGMENT

Rule. Respondent No.1 waives service. Respondent No.2 is formal party so far as the challenge involved in the present Petition is concerned. Heard forthwith.

2. It is the case of the Petitioner that there is a petition for divorce pending before the trial Court. During the pendency of the suit a fresh cause of action has arisen, namely,

abandonment of the conjugal home for a period of three years. Hence the Petitioner sought leave to amend the plaint to introduce this subsequent ground. The trial Court proceeded on the footing that since the plaintiff is under cross-examination, it would necessitate a fresh issue and a fresh recording of evidence and consequently rejected the application for amendment and hence the present Petition.

3. On behalf of the Respondent No.1 it is contended that the Petitioner herein had earlier filed a suit in June 1999 on the ground of desertion. That suit was withdrawn without liberty. It is further contended that the cause now pleaded arose at the time when the other suit was pending and this being the situation, the learned trial Judge was right in rejecting the application for amendment.

4. There are serious disputes between the parties leading to filing of petition for divorce. In such matters, if there are new grounds available which arise in the course of the suit, normally Courts should allow the same. In the instant case, the merits of the matter have not been gone into. What the Petitioner is pleading is a new ground. If

that be the case, I see no reason why the trial Court ought to have rejected the amendment even considering all the principles insofar as the grant of amendment is concerned, instead of driving the parties to file separate petition. In the interest of justice it is required that the suit be allowed to be amended to include the additional ground. No prejudice would be occasioned to the Respondent No.1.

5. In the light of that, the impugned Order dated 17th April, 2002 is set aside. Application Exhibit 1 is allowed. Petitioner to carry out the amendment before the trial Court within a period of fifteen days from today.

Rule made absolute in the above terms. No order as to costs.

F.I. REBELLO,J.

ac.